

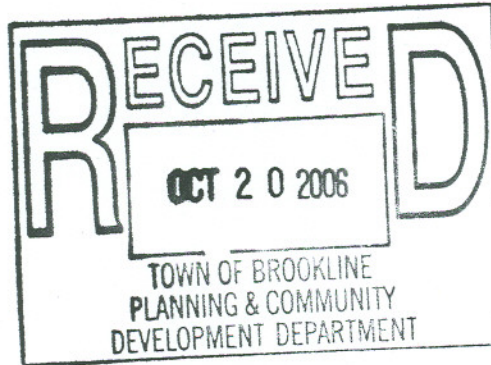
Approved



BOARD OF APPEALS

DIANE R. GORDON, Co-Chair
HARRY MILLER, Co-Chair
BAILEY S. SILBERT

TOWN OF BROOKLINE
Massachusetts



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PATRICK J. WARD, Secretary

**TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA 060024**

Petitioners, Jonathan Wadleigh and Joanne Womboldt, owners of 145 Longwood Avenue, applied to the Building Commissioner for permission to convert an attached three-unit building to a four-unit building by adding a basement apartment in accordance with the plans submitted. The application was denied and an appeal to this Board was taken from the decision of the Commissioner.

On April 27, 2006, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals. The Board then fixed Thursday, June 1, 2006, at 7:00 P.M., in the Selectmen's Hearing Room on the sixth floor of Town Hall as the time and place for a public hearing on the appeal. The petitioners requested and were granted a postponement of the hearing date and the appeal was rescheduled for Thursday, July 20, 2006, at the same time and place. Notice of the rescheduled hearing was mailed to the petitioner, to their attorney (if any of record), to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others as required by law. Notice of the hearing was published on June 29, 2006 and July 6, 2006 in the Brookline TAB, a newspaper published in Brookline. Copy of said notice is as follows:

**TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS**

NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: WADLEIGH JONATHAN & WOMBOLDT JOANNE

Location of Premises: 145 LONGWOOD BRKL

Date of Hearing: 07/20/2006

Time of Hearing: 07:30 p.m.

Place of Hearing: Selectmen's Hearing Room, 6th Floor

A public hearing will be held for a variance and/or a special permit from:

- 1) **5.05; Conversions; Special Permit Required.**
- 2) **5.20; Floor Area Ratio; Variance Required.**
- 3) **5.50; Front Yard Requirements; Variance Required.**
- 4) **5.60; Side Yard Requirements; Variance Required.**
- 5) **5.70; Rear Yard Requirements; Variance Required.**
- 6) **5.90; Minimum Landscaped Open Space; Variance Required.**
- 7) **5.91; Minimum Usable Open Space; Variance Required.**
- 8) **6.01.2.a; General Regulations Applying to Required Off-Street Parking Facilities; Special Permit Required.**
- 9) **6.02.1: Table of Off-Street Parking Space Requirements; Variance Required.**
- 10) **For the design of All Off-street Parking Facilities:**
 - a. **6.04.3: Special Permit Required.**
 - b. **6.04.5.b; Variance Required.**
 - c. **6.04.9.b; Variance Required.**
 - d. **6.04.12; Special Permit Required.**
- 11) **8.02.2; Alteration or Extension; Special Permit Required.**

Of the Zoning By-Law to
to install a basement apartment thereby
converting the premises from a three
unit residential building into a four
unit residential building per plans

at **145 LONGWOOD AVE BRKL**

Said Premise located in a
M-1.5

district.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

**Diane R. Gordon
Harry Miller
Bailey Silbert**

Publish: 06/29/2006 and 07/06/2006

After postponement of the original hearing date, a public hearing was held by this Board on July 20, 2006, at 7:00 P.M., in the Selectmen's Hearing Room, 6th Floor. Present were Harry S. Miller, Bailey Silbert and Murray G. Shocket.

Petitioners were represented by Attorney Roger R. Lipson of 7 Harvard Street in Brookline. Mr. Lipson stated that the petitioners wish to construct a two-level four-bedroom basement apartment in an existing three-family house which apartment would consist of a total gross floor area of 1,990 square feet. Mr. Lipson informed the Board that the property is an attached building built around 1920 and is one of six attached rowhouse buildings situated around a courtyard known as the Longwood Courtyard. The property abuts the Longwood Playground and is adjacent to the Lawrence School. He stated that most of the properties in the Longwood Courtyard had been converted into condominiums but that the petitioners had no intention of converting their property and, that as long as they owned the property, they would continue to maintain them as residential rental units.

In summarizing the zoning issues requiring relief, Mr. Lipson stated that the two main

issues before the Board are the FAR and off-street parking requirements. He also pointed out that, under Section 5.05 of the Zoning By-Laws, the Board may waive the dimensional requirements provided no pre-existing non-conformities related to those requirements are increased and provided that all other requirements for the conversion to a four-unit building are met. Mr. Lipson pointed out that the addition of a fourth unit would require providing a total of nine parking spaces, four of which already exist at the property. He stated that the petitioners are seeking a special permit from the Board allowed under Section 6.01.2 which gives the Board of Appeals the discretion to issue a special permit under Article IX to waive not more than one-half the number of parking spaces required under Sections 6.02 and 6.05. Therefore, the petitioners are requesting approval for five spaces, the fifth space to be provided at the property owned by the petitioners at 155 Longwood Avenue which would be within the 400 feet required by Section 6.03.b.

Mr. Lipson next reviewed the history of the property. The land on which the property is built originally was wetlands and sloped down towards the Longwood Playground. Due to this unique topography, the land had to be filled in to make it level before construction of the properties could occur. As a result, a retaining wall, approximately twelve feet in height and running along the rear of the property, was constructed at the boundary line between it and the Longwood Playground. Over the years, due to drainage problems, the retaining wall, as well as the foundation of the property itself, sustained significant deterioration. This resulted in cracks in the wall and in the settling of the building's foundation. Mr. Lipson presented the Board with a copy of a report from Arthur Choo Associates, Inc., Consulting Engineers, who, after examining both the retaining wall and the building's foundation, concluded that the deterioration of both was the result of the topography of the property and the soil conditions of the wetlands

and the fact that the foundation of the property was supported by the wetlands soil. The report recommended that both the foundation and the retaining wall both required substantial reconstruction in order to provide improved support.

Mr. Lipson stated that the petitioner's lot is one of the smallest lots in the zoning district and contains only 3,725 square feet. The current allowable FAR for the district is 1.5, the existing FAR for the property is currently 1.8 and requested FAR is 2.1. He compared the petitioner's property with some of the other properties in the same courtyard. 143 Longwood Avenue, for example, originally a three-family house, was converted to a five-unit property. He pointed out to the Board that both 143 Longwood Avenue and another three-family property across the courtyard, which had similarly large units, were both above the current allowable FAR.

Mr. Lipson informed the Board that during petitioners' attempts to repair the retaining wall, some damage had occurred to the turf of the playground and that the petitioners had agreed to repair and reseed the damaged area. He stated that the petitioners had further agreed to provide some benefits to the Town such as improving an existing path in the playground that ran behind their property by replacing it with rolled crushed stone over asphalt and restoring a dilapidated fence around the tennis courts.

Addressing the petitioner's basis for being granted a variance, Mr. Lipson referenced the unique topography of the land, its status as wetlands, its sandy soil conditions, and the fact that the property's foundation is built on piles sitting on top of the sand, all of which conditions have resulted in drainage problems causing the retaining wall to crack and endangering the property's foundation. Mr. Lipson noted that Massachusetts General Laws, Chapter 40A, Section 10, in regard to the circumstances warranting the granting of a variance, listed, among other reasons,

soil conditions, topography of the land and that if a literal enforcement of the zoning by-law would cause a substantial hardship, that it was permissible for the Board to grant the desired relief without substantial detriment to the purposes of the by-law.

Mr. Lipson said that the petitioner's proposal would fulfill a much sought after need for a rental unit in the Town big enough for a large family. Such a rental unit would be especially attractive because of the property's location near public transportation, a school and a park. He stated that the proposed plan included the installation of attractive basement apartment windows in the large foundation wall facing the playground which would eliminate an ugly eyesore due to the foundation wall having been a favorite target of graffiti artists over the years and that this would be less of an incentive for them to continue their activities.

Chairman Harry S. Miller asked Mr. Lipson to briefly mention the hardship the petitioner would face if he had to comply with the zoning by-laws requiring a variance. In addition to the statutory reasons he previously alluded to, Mr. Lipson stated that the petitioner, in order to meet the financial burden of the high cost of repairing the retaining wall and the foundation of his property, he needed to convert the extremely large basement area into a fourth rental unit. He stated that if the retaining wall is not repaired properly, it not only will jeopardize the safety of his property and his neighbor's property across the courtyard but will also endanger the children who play in the playground as well as other users.

At the conclusion of his presentation, Mr. Lipson presented the Board with a petition in support of the application signed by 26 neighbors including nearly every owner in the Longwood Courtyard and also submitted two letters from two owners of condominium units in the courtyard.

After Mr. Lipson completed his presentation, he introduced the next speaker, the

petitioner's architect, Mark Nielsen, of CYMA 2, whose office is located at 318 Harvard Street, Brookline. Mr. Nielsen reviewed several cross-section diagrams of the proposed plan. He stated that the plan would also provide an enhanced fire egress at the rear of the property. Chairman Miller asked Mr. Nielsen if the floor of the sub-basement was remaining where it is currently. Mr. Nielsen stated that the floor was being moved down. He pointed out that there is a perimeter grade beam around the building which crosses over pile caps that go down to stronger earth. He stated that, due to settlement over the years, the bottom of the grade beam is less than one foot below the current grade. Mr. Nielsen said that, normally, you would build a footing that would extend four feet below grade so that you would not get an upheaval of frost. He also noted that there is a cracking along the foundation wall on the south side that faces the tennis courts. Mr. Nielsen said that what is required is to build a foundation wall that goes down below four feet and reinforces the grade beam by possibly supplementing the existing piles with additional piles. He stated that this work will be fairly labor intensive and will require that the work be done in stages.

Board member Murray Shocket asked Mr. Lipson if the petitioner's promise to the Planning Board that the property would remain as rental units for as long as they owned the property was an inducement for the Planning Board to approve the petitioner's application. Mr. Lipson said that it was a major factor in their recommendation. Mr. Shocket wanted to know what would prevent the petitioners from converting the rental property into a condominium after receiving approval of their application to build a fourth rental unit. Mr. Lipson responded that his client would be agreeable to a condition of the Board requiring the petitioner to maintain the property as rental units for as long as they owned the property. Mr. Shocket asked what would happen if the petitioner sold 145 Longwood Avenue. Mr. Shocket noted that the Planning Board

had recommended as a condition that the petitioner be required to provide the off-site parking space at 155 Longwood Avenue for a period of ten years. Mr. Shocket asked Mr. Lipson if the petitioner would be agreeable to maintaining the rental units at 145 Longwood Avenue as rental units for the same period of time. Mr. Lipson replied that it has always been his client's intention to maintain 145 Longwood Avenue as rental housing but wished to confer with him directly on this point.

Jonathan Wadleigh, one of petitioners, addressed the Board in reply to Mr. Shocket's question. He stated that he had owned 145 Longwood Avenue for 33 years and that he had owned 155 Longwood Avenue for 14 years. Mr. Wadleigh stated that he had always maintained the units at 145 Longwood Avenue as rental units and would continue to do so until the day he dies. He stated, however, that he was concerned about his wife and her health if she were required to take over the responsibilities of managing the rental units upon his death. He said that both properties were the main source of their income. Mr. Shocket stated that he did not doubt Mr. Wadleigh's intentions but was concerned about what might happen if the petitioner sold 145 Longwood Avenue. Mr. Shocket stated that he would like to see something in the conditions that would maintain 145 Longwood Avenue as rental property. Mr. Wadleigh stated that he understood the Planning Board decision in regard to the off-site parking space to mean that if he ever converted 145 Longwood Avenue into a condominium, it would make sense for the off-site parking space to be deeded to that particular condominium unit.

Chairman Miller addressed Mr. Wadleigh and stated that what the Board is concerned about goes beyond the off-site parking space and that the Board would need to know if the petitioner is willing to accept a condition relative to the rental use of 145 Longwood Avenue for a specific period of time. Chairman Miller stated that the Board has no authority to make a

condition dependent on a term of ownership.

Mr. Lipson asked Chairman Miller what period of time the Board would consider for requiring the property to be maintained as rental units. Mr. Shocket responded saying that he would like to see a period of time conditioned along the lines of the Planning Board recommendation for maintaining the off-site parking space, namely, ten years. Mr. Shocket read a portion of the Planning Board report and stated that he believed that the maintenance of 145 Longwood Avenue as a rental property was a significant factor in the Planning Board's recommendation.

Chairman Miller stated that Mr. Shocket's statement was a worthwhile comment and said that the Board of Appeals is charged with making certain findings in regard to the issuance of a variance which findings goes well beyond the granting of a special permit.

Mr. Lipson, after conferring with the petitioner, stated that the petitioner believes that the ten year period, as noted in Condition No. 2 of the Planning Board's recommendation for the off-site parking space, which period runs from the date of issuance of the certificate of occupancy for the fourth unit, is a fair amount of time.

Chairman Miller then asked whether there was anyone present who wished to speak in favor or in opposition to the petitioner's application. There were none.

Chairman Miller then asked for the report of the Planning Board. Timothy Greenhill, Staff Planner, of the Department of Planning and Community Development, representing the Planning Board, presented the Planning Board Report for 145 Longwood Avenue, dated June 29, 2006. Mr. Greenhill stated that the Planning Board found that the petitioner provided satisfactory evidence for a variance. He stated that there were some concerns raised in regard to the additional parking space which required the condition to use the off-site parking space on the

petitioner's other property located nearby at 155 Longwood Avenue. Mr. Greenhill stated that the Planning Board found that there were many improvements to the property. He noted that the Planning Board specifically mentioned that the use of rental space was a benefit to the community and a much needed commodity.

Chairman Miller stated that if there is approval by the Board of the application, that the additional condition which the Board has been discussing will make reference to the point made by the Planning Board in their Report that they were pleased that the petitioner would be creating a new rental unit and would be maintaining the other three units as rental housing since that is one of the major goals of the Comprehensive Plan and the Coolidge Corner South side Neighborhood Association.

Mr. Greenhill stated that the Planning Board, by a vote of 3 to 1, recommended approval of the proposal subject to the following conditions:

- 1) Prior to obtaining a building permit, the applicant shall submit to the Assistant Director of Regulatory Planning a final landscaping plan and parking plan for review and approval.
- 2) In addition to providing 4 parking spaces on-site at 145 Longwood Avenue, 1 parking space shall be provided at 155 Longwood Avenue for one of the rental units at 145 Longwood Avenue for at least 10 years from the date of issuance of the Certificate of Occupancy. If the ownership of 155 Longwood changes prior to the expiration of the 10 year period, the new owner of 155 Longwood shall have 90 days to provide a new parking space either on site or off site with evidence of such submitted to the Department of Planning and Community Development.
- 3) When the owner of 145 Longwood Avenue, who also currently owns 155 Longwood Avenue, shall transfer title to a new owner of 155 Longwood Avenue, the deed to the new owner shall reference the Board of Appeals decision No. 060024 including the Book and Page Numbers and the date of recording of such decision in the Norfolk Registry of Deeds.
- 4) Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: a) a final site plan stamped and signed by a registered engineer or land

surveyor; b) floor plans and building elevations stamped and signed by a registered architect; and c) evidence that the Board of Appeals decision has been submitted to the Registry of Deeds.

Chairman Miller then asked for the recommendation of the Building Department. Frank DeAngelis, Building Inspector, Brookline Building Department, stated that he is familiar with the property because it is within his district of inspection. Mr. DeAngelis stated that he is familiar with the work being performed on the property in connection with a prior building permit. He stated that the Building Department has reviewed the proposed plans and has no objections to the proposal.

Chairman Miller asked if the Board members had any questions. Mr. Shocket stated that he had no objections to the proposal but would like to see a condition added to the Board's decision requiring that the property be maintained as rental property for a period of time regardless of who owns the property. Mr. Shocklet added that he would like to note that it was represented to the Board that the maintenance of the property as rental housing was one of the major reasons to grant a variance.

Chairman Miller stated that Mr. Lipson has presented a good argument as to why this proposal has met the elements for a variance. Chairman Miller stated that since the use of rental housing was an important consideration at the Planning Board level, the provision of an additional condition, namely, that the property at 145 Longwood Avenue be required to maintain its units as rental units for a period of 10 years from the date of issuance of the Certificate of Occupancy for the fourth unit and that such condition be noted in the Board's decision as an important inclusion in the granting of the relief sought by the petitioner.

Mr. Shocket stated that he believed that the length of time of the condition was fair.

The Board makes the following findings pursuant to Section 9.05(1):

1. The specific site is an appropriate location for the conversion of a three-family house to a four-family house.
2. The use as proposed by the petitioner will not adversely affect the neighborhood.
3. The proposed plan does not constitute a nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The proposed plan will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Accordingly, the Board of Appeals votes unanimously to grant the petitioner's application subject to the conditions as set out herein above in the Planning Board Report dated June 29, 2006 and including the additional condition imposed by the Board as stated herein.

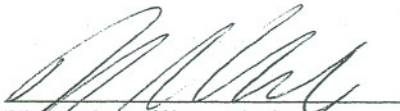
Unanimous Decision of
the Board of Appeals

Date of Filing: October 19, 2006

A True Copy:

ATTEST

Patrick J. Ward
Clerk, Board of Appeals


Harry S. Miller, Chairman

Twenty days have elapsed and no
appeal has been filed.

A True Copy:

ATTEST:

Patrick J. Ward
Town Clerk